

### **REMARKS**

Claims 1-5 and 7-17 are now pending in the application. Claims 1-16 stand rejected; Claim 6 has been cancelled; Claims 1, 2 and 9 have been amended; and Claim 17 is new. Bases for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **DRAWINGS**

The undersigned gratefully acknowledges the Examiner's acceptance of the drawings filed October 30, 2003.

### **SPECIFICATION**

A minor amendment has been made to Paragraph [0103] to overcome an informality.

### **CLAIM AMENDMENTS**

Minor amendments have been made to Claims 1, 2 and 9 to correct various informalities.

### **DOUBLE PATENTING**

The Examiner has objected to independent Claims 1 and 12 of the instant application under the judicially-created doctrine of "obviousness-type" double patenting with respect to Claim 8 of co-pending Application No. 10/418,022 (hereinafter "Co-

Pending Application”) and U.S. Patent No. 4,200,862 to Campbell et al. (hereinafter “Campbell”), and with respect to Claim 6 of the Co-Pending Application and Campbell, respectively.

Applicants include herewith a terminal disclaimer. Therefore, withdrawal of these objections are respectfully requested.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1-5 and 7-9 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Belliveau (U.S. Pat. No. 6,331,813; hereinafter “Belliveau”) in view of Campbell. This rejection is respectfully traversed.

At the outset, Applicants note that independent Claim 1 has been amended to now recite:

a hand-held remote transmitter for selectively transmitting commands to the messenger hub through a first set of electromagnetic wave signals and adapted to selectively transmit commands to one or more home electronic devices through a second set of electromagnetic wave signals the messenger hub adapted to be responsive to a corresponding portion of the commands to activate one or more of the remotely controlled switches, the home electronic devices adapted to be responsive to another corresponding portion of the commands to selectively operate the home electronic devices, the hand-held remote transmitter including:

a first switch having a plurality of zones, each of the zones being associated with a set of device addresses, the first switch being selectively positionable into a desired zone, the set of device addresses including one or more of the device addresses to which the remotely controlled switches are set;

at least one second switch, each second switch being associated with a single device address

in the set of device addresses in response to the positioning of the first switch into a desired zone such that operation of one of the second switches causes the hand-held remote transmitter to generate a command that causes the messenger hub to generate a message to activate any remotely controlled switch that has been set to a device address corresponding to the single device address;

a plurality of mode selector buttons, each signal produced by actuation of each of the mode selector buttons programmed to correspond to an associated one of the home electronic devices; and

a plurality of feature control buttons,

wherein operation of one of the mode selector buttons associates at least a portion of the feature control buttons with a given one of the home electronic devices to thereby permit a user to operate the given home electronic device.

Applicant respectfully asserts that these features as claimed are not taught or suggested whatsoever by Belliveau or Campbell, either alone or in combination.

Belliveau appears to disclose a control device 200 including a plug 202 and a plurality of operator actuation devices 204 (see at least Column 3, Lines 64-67). As shown in Figure 2, the control device 200 is not a hand-held remote transmitter, as it requires plug 202 to be engaged with the electrical system in order to function. Further, Belliveau does not teach or suggest whatsoever the use of a hand-held remote transmitter. Also, Belliveau fails to teach or suggest whatsoever the use of a hand-held remote transmitter with a positionable key.

With regard to Campbell, Applicants respectfully assert that Campbell does not teach or suggest whatsoever the use of a positionable key. With reference to Applicants' specification, Applicants disclose a first switch or selector wheel switch 600 which is positionable into a plurality of different zones 620a...f and at least one second

switch or zone switches 670a, 670b, 670c (see at least [0093] through [0096]) which are associated with a signal device address. Campbell, on the other hand, appears to disclose a handset including “number keys 1 to 16 and the operation keys DIM, ON, OFF, CLEAR, BRIGHTEN and ALL” (see at least Column 4, Lines 35-55). Neither the auxiliary keyboard unit or handset 2 nor the keyboard 11 are disclosed in Campbell as including a positionable key as claimed in Applicants’ application. Applicants further note it is improper to modify Campbell to include a positionable key as Campbell does not suggest whatsoever the desirability of such a modification. In particular,

The mere fact that prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification.

***In re Fritch***, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-1784 (Fed. Cir. 1992) (citing ***In re Gordon***, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)).

In addition, Applicants respectfully submit that it is improper to modify Belliveau to include the teachings of Campbell, as there is no teaching in Belliveau whatsoever regarding the desirability of this modification. Specifically:

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so.

***ACS Hosp. Sys., Inc. v. Montefiore Hosp.***, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

Thus, as neither Belliveau or Campbell teach or suggest all of the features of Applicants’ claimed invention, Applicants respectfully submit that independent Claim 1 is patentable and in condition for allowance. In addition, as Claims 2-9 depend, directly or

indirectly, from independent Claim 1, Applicants respectfully submit that these claims are also patentable and in condition for allowance.

As the Examiner has not presented a prima facie case of obviousness, reconsideration and withdrawal of this rejection are respectfully requested regarding Claims 1-9.

Claims 10-11 stand rejected as being unpatentable over Belliveau in view of Campbell, and further in view of Murray (U.S. Pat. No. 5,898,397; hereinafter "Murray"). This rejection is respectfully traversed.

Applicants respectfully refer the Examiner to the remarks above regarding Belliveau and Campbell. With regard to Murray, Murray appears to disclose a remote control for a garage door only. Further, Applicants respectfully submit that it is improper to modify Belliveau or Campbell to include the teachings of Murray, as there is no teaching in Belliveau or Campbell whatsoever regarding the desirability of this modification.

Thus, Applicants submit that the Examiner has not presented a prima facie case of obviousness. Further, Claims 10 and 11 depend directly from independent Claim 1. Therefore, reconsideration and withdrawal of this rejection are respectfully requested regarding Claims 10-11.

Claims 12-16 stand rejected as being unpatentable over Belliveau and in view of White (U.S. Pat. No. 6,532,152; hereinafter "White"), and further in view of Campbell. This rejection is respectfully traversed.

At the outset, Applicants note that independent Claim 12 recites:

a messenger hub having a power input portion and a controller, the power input portion of the messenger hub including a pair of terminals that are adapted for coupling to an electrical power line, the controller of the messenger hub being adapted to selectively generate an electronic message that is adapted to be transmitted through the electrical power line; and

a remotely controlled outdoor switch having a power input portion, a power output portion, a controller and a sealed housing, the power input portion of the remotely controlled outdoor switch including a pair of terminals that are adapted for coupling to an electrical power line and receiving the electronic message, the controller of the remotely controlled outdoor switch being coupled to the power input portion of the remotely controlled outdoor switch and adapted to selectively enable or disable transmission of electrical power between the power input portion of the remotely controlled switch and the power output portion in response to the electronic message, wherein the controller address and device address of the outdoor switch are programmed by the electronic message.

Applicant respectfully asserts that these features as claimed are not taught or suggested whatsoever by Belliveau, White or Campbell, either alone or in combination.

Applicants respectfully refer the Examiner to the remarks above regarding Belliveau and Campbell. In addition to the previous remarks, Applicants note that neither Belliveau or Campbell disclose whatsoever the use of an outdoor switch, as both Belliveau and Campbell disclose solely indoor use. Further, neither Belliveau or Campbell disclose a switch wherein the controller address and device address are programmed by an electronic message. Rather, in Belliveau, rotary switches 102, 106 are used to set the controller address and device address at the appliance (see at least Figure 1 and Column 3, lines 60-63). Similarly, Campbell discloses rotary switches 7, 8 for setting the controller address and device address associated with the slave unit (see

at least Column 4, lines 4-13). White does not remedy these shortcomings of Belliveau and Campbell.

With regard to White, Applicants respectfully assert that White is non-analogous art, as one skilled in the art of home security would not look to hand-held computer design. Specifically,

The scope of pertinent prior art has been defined as that reasonably pertinent to the particular problem with which the inventor was involved.

***Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co.***, 730 F.2d 1452, 1460, 221 USPQ 481, 487 (Fed. Cir. 1984) (quoting ***Stratoflex, Inc. v Aeroquip Corp.***, 713 F.2d 1530, 1535, 218 USPQ 871, 876 (Fed. Circ. 1983)). Applicants further note it would not be obvious to modify Belliveau to include a seal, as Belliveau discloses the use of his invention inside a building.

Thus, Applicants respectfully submit that independent Claim 12 is patentable and in condition for allowance. In addition, as Claims 13-16 depend, directly or indirectly, from independent Claim 12, Applicants respectfully submit that these claims are also patentable and in condition for allowance.

As the Examiner has not presented a prima facie case of obviousness, reconsideration and withdrawal of this rejection are respectfully requested regarding Claims 12-16.

#### **NEW CLAIM**

Applicants have added new Claim 17 to depend from independent Claim 1. Support for new Claim 17 can be found in the specification as filed and, thus, does not constitute new matter. As discussed previously, neither Belliveau or Campbell teach

programmed mood selector buttons, as claimed in new Claim 17. Accordingly, Applicants respectfully submit that new Claim 17 is patentable and in condition for allowance.

### CONCLUSION


It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

MDZ/EKS/cr/lf-s

By:   
Michael D. Zalobsky, Reg. No. 45,512  
Erica K. Schaefer, Reg. No. 55,861

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